

## **General Conditions & Requirements**

### **1 - Sale Area**

#### **1.1 - Timber Sale Map (2/04)**

The boundaries of the Sale Area and Payment Unit(s) are shown on the attached Timber Sale Map. The boundaries were designated on the ground before the sale was advertised by the Department of Natural Resources (DNR) to meet the anticipated needs of both parties.

#### **1.2 - Boundaries (2/04)**

The sale boundary and Payment Unit boundaries are marked and identified by blue, red and/or yellow paint, unless otherwise indicated in this contract. The painted boundary line trees are not Included Timber and are to be protected unless otherwise directed by the Unit Manager or their representative.

### **2 - Timber Specifications**

#### **2.1 - Included Timber (2/04)**

Included timber is listed in Description of Timber on page 1 of this contract. Cutting or removal of any forest products not specifically included or covered by this contract shall be a violation of Part 21, subpart 15, 1994 PA 451.

#### **2.2 - Utilization (2/04)**

Unless otherwise indicated in this contract, the DNR standards are based on utilization of a 100" piece to a top diameter inside bark of 8 inches for sawlogs in the northern Lower Peninsula, 10 inches for sawlogs in the Upper Peninsula and 4 inches for pulpwood. If not otherwise specified, the maximum stump height shall not exceed 24 inches for sawlogs or 12 inches for pulpwood. Higher stumps resulting from multiple stemmed trees may be left if authorized by the Unit Manager or their representative. The Purchaser shall not cut stumps lower than the DNR paint markings that indicate individual products to be cut.

#### **2.3 - Log Rule (2/04)**

Unless otherwise indicated in this contract, all board foot content of sawlog size products will be determined by the International 1/4 Inch Log Rule in the northern Lower Peninsula, and the Scribner Decimal C Log Rule in the Upper Peninsula.

### **3 - Payments**

#### **3.1 - Payment (2/04)**

Forest products shall be paid for according to the Payment Schedule and Description of Timber on page 1 of this contract. Payment is to be made by cash, personal or company check, cashier's check, or money order, payable to the State of Michigan and submitted to the Unit Manager.

#### **3.2 - Scaled Sales (2/04)**

On scaled sales, forest products will be placed for measurement as indicated in this contract or as instructed by the Unit Manager or their representative and not removed from the designated place until measured and paid for at the specified Purchase Unit Price. The Unit Manager may at his discretion, authorize the measurement and payment by other means.

On pre-measurement sales, all required payment must be made prior to cutting in accordance with the specified Payment Schedule. Cutting in any sale without the required advance payment will be considered a trespass and will be assessed an additional 10% total value of the unit for the first offense. Any future offense on a State Forest Timber Sale contract will be charged an additional 20% total value of the unit.

#### 3.4 - Damaged Timber (2/04)

Unnecessary damage to or negligent or willful cutting of undesignated timber meeting Utilization standards described in Section 2.2 is strictly prohibited. Unless otherwise indicated in this contract, if such damage or cutting occurs, purchaser shall pay as fixed, agreed and liquidated damages double the price specified in this contract for that species and product. If the price is not specified in this contract, it shall be paid for at double the average price received for that species and product. Such payment does not constitute ownership of the undesignated timber.

#### 3.5 - Adjustment of Quantity (2/04)

Estimated quantities in this contract may be revised by correcting errors due to computer input, miscalculation, computer malfunction or area determination. These adjustments will only be made for errors that result in a reduction in total sale value of at least 10 percent or \$1,000, whichever is less. Adjustment in quantities shall not obligate the DNR to designate additional quantities when the original quantity estimate is overstated. No adjustments in quantity shall be made for variations in accuracy resulting from planned sampling and measuring methods or judgments of timber quality or defect. No adjustment in price will be made.

### 4 - Transportation

#### 4.1 - Construction (2/04)

The location and specifications of roads, landings and skid trails must be approved by the Unit Manager or their representative prior to construction. Timber within the agreed upon construction limits shall be taken by the purchaser and paid for at the specified sale prices. All stumps from construction will be tipped back to an upright position. The DNR will secure any necessary highway and stream crossing permits that may be required on State owned land unless otherwise specified in this contract. Permit processing will take 60-90 days once the Purchaser notifies the Unit Manager that a permit is needed and that construction is planned.

#### 4.2 - Maintenance (2/04)

The purchaser shall maintain all existing roads in a condition equal to or better than the condition prior to the sale.

#### 4.3 - Public Right-of-Way (2/04)

If the purchaser expects to discharge explosives, or excavate on any public highway or public utility or pipeline right-of-way, or to operate logging equipment or to deck wood products on any public utility or pipeline right-of-way, the purchaser shall give notice to the agency, persons, or company having such facilities on State or private land, in accordance with 1974 PA 53. The Purchaser is required to obtain a permit from the Michigan Department of Transportation (MDOT) to work in the right-of-way of a state highway. Purchaser must contact the County Road Commission for any required permit to make use of a county road right-of-way.

### 5 - Operations

#### 5.1 - Notification (8/05)

The purchaser shall notify the Unit Manager or their representative before any sale operations begin. A pre-sale conference between the contractor and the DNR timber sale administrator is required. An on-site conference between

the contractor and the DNR timber sale administrator may be required. The Unit Manager or their representative must be notified whenever operations are temporarily suspended, whenever operations commence, and when the sale is complete.

#### 5.2 - Conduct of Operations (2/04)

The Purchaser shall conduct all operations under this contract in a safe, workmanlike manner and shall minimize soil damage, including, but not limited to erosion and compaction; damage to young growth; and damage to trees left standing. The Purchaser shall take all reasonable precautions to prevent pollution of air, soil, and water by the Purchaser's operations. All operations including slash, landings, and skid trails are to be confined within the sale area unless approved by the Unit Manager or their representative.

### 5.2 - Conduct of Operations

#### 5.2.1 - Slash (2/04)

In accordance with Part 519, 1994 PA 451, all slash shall be removed from lands within 50 feet of the cleared portion of any public road or highway. Unless otherwise indicated in this contract, all other slash shall be left as it falls except that no tops shall be left hanging in standing trees. Where slash disposal is required, it shall be done as cutting progresses. Slash shall not be windrowed or piled unless otherwise instructed.

#### 5.2.2 - Hazard Trees (8/04)

Standing dead trees shall be protected and left standing unless they are a safety hazard or otherwise designated in this contract. Individual live trees not previously designated for cutting which are determined to be a safety hazard will be designated by the DNR for felling. Hazard trees that are felled shall be left on site unless designated as included timber and paid for at contract rates.

#### 5.3 - Stream Protection (2/04)

In accordance with Parts 31, 91, 301, 303, and 305, 1994 PA 451, no equipment is to be operated over or through streams except on approved stream crossings. Operations shall be conducted to prevent debris from entering stream courses. Any fill placed in wetlands as a result of harvest operations must be removed. Purchaser is responsible for implementing all Best Management Practices (BMPs) as outlined in the DNR publication "Water Quality Management Practices on Forest Land" even if not specifically mentioned in this contract. All roads, streams, and wetland crossings must conform to the BMPs.

#### 5.4 - Soil Protection (2/04)

The Purchaser shall avoid operating equipment when soil conditions are such that excessive damage will result as determined by the Unit Manager or their representative.

#### 5.5 - Protection of Improvements (2/04)

Purchaser shall protect improvements such as roads, trails, telephone lines, ditches and fences. Roads and trails needed for fire protection or other purposes and designated on the Timber Sale Map shall be kept reasonably free of equipment and products, slash and debris resulting from Purchaser's Operations.

### 5.5 - Protection of Improvements

#### 5.5.1 - Protection of Land Survey Monuments (2/04)

The purchaser shall protect all known land survey monuments and their respective witness trees from damage or

obliteration. If such corners are destroyed, the purchaser shall pay the cost of restoration.

#### 5.5.2 - Protection of Well Sites (2/04)

In accordance with Part 615, 1994 PA 451, all burnable material shall be removed from within a 75-foot radius of all oil field installations. This includes actual well locations, tank batteries, pump houses and similar equipment.

#### 5.6 - Debris and Waste Material (2/04)

The purchaser will maintain the work area in a clean and orderly condition. At the termination of the sale, all equipment, material and debris brought onto the sale area as part of the operation shall be removed.

##### 5.6.1 - Petroleum products (2/04)

Dumping of waste oil or hydraulic fluid resulting from on-site maintenance of equipment is illegal per PA 451 of 1994. Violations are subject to a fine of up to \$2,500. Any spill, accidental or intentional, must be cleaned up immediately and reported to the Unit Manager and the Environmental Response Division of the Department of Environmental Quality. All contaminated soil must be removed to a licensed disposal area. Cost of any clean-up is the sole responsibility of the contractor.

#### 5.7 - Protection of Historical Sites (2/04)

The location of known historic or prehistoric sites, buildings, objects, and properties related to American history, architecture, archaeology, and culture, may be protected by state or federal law. Any such location shall be identified on the ground by the DNR. The DNR may unilaterally modify or cancel this contract to protect an area, object or antiquity, artifact, or similar object which is or may be entitled to protection under these laws regardless of when the area, object or artifact is discovered or identified. Purchaser has a duty to promptly report any suspected discovery to the Unit Manager. Operations in the area may be suspended pending further investigation.

Wheeled or track-laying equipment shall not be operated within such areas except on approved roads, landings, or skid trails. Unless agreed otherwise, trees felled into such areas, and the resulting slash, shall be removed by a method that will minimize damage to the area.

#### 5.8 - Protection of Endangered Species (2/04)

The location of areas needing special measures for protection of plants or animals listed as threatened or endangered under state or federal law are shown on the Timber Sale Map and identified on the ground. If protection measures prove inadequate, if other such areas are discovered, or if new species are listed, the DNR may either cancel or modify this contract to provide additional protection regardless of when such facts become known. Purchaser has the duty to report a suspected discovery of protected species to the Unit Manager. Operations in the area may be suspended pending further investigation of the site.

### 6 - Safety and Fire Prevention

#### 6.1 - General Industry Safety Standards (4/06)

The purchaser, his agents, subcontractors, and all employees must comply with the general industry safety standards for logging promulgated by the Michigan Occupational Safety and Health Administration (MIOSHA), as set forth in Michigan Administrative Code, 1979 AC R. 408.15101 et seq, as amended. The purchaser must provide written notification of this requirement to all subcontractors. A violation of these standards is considered to be a breach of this contract, and may result in suspension or termination of this contract, and may affect the purchaser's ability to procure future contracts. Compliance with the safety standards is required whether or not MIOSHA has jurisdiction under the

circumstances.

### 6.3 - Training (1/06)

Stumpage purchasers, their employees, their contractors, and their subcontractors shall have adequate training, sufficient for their roles and responsibilities. On State Forest land, purchasers are required to verify that a foreman who has a current certificate of completion of Michigan Sustainable Forestry Education (SFE) or Wisconsin Forest Industry Safety and Training Alliance (FISTA) training will supervise logging operations. Current status of SFE or FISTA training will be verified at the pre-sale meeting with the sale administrator.

## 7 - Other Conditions

### 7.1 - Title (8/05)

Cut forest products remaining on State land 60 days after the expiration date of the contract or the closure date of the Timber Sale Completion Report (PR 4036), whichever is earlier, will become the property of the State of Michigan unless written permission for further storage is received from the Unit Manager. All uncut timber shall become the property of the State of Michigan upon contract expiration unless a contract extension has been granted.

### 7.2 - Extensions (2/04)

The sale duration has been designed to provide sufficient time for the removal of timber from the Sale Area. The Purchaser, therefore, is expected to complete all work on this sale by the contract expiration date. Any contract which is not completed by the contract expiration date may be extended at the sole discretion of the DNR.

If an extension is granted, the following conditions apply:

(A) For the first extension of one year or less, the extension fee will be equal to five percent of the stumpage price of all uncompleted Payment Units. Thereafter, for each additional one year or less, the extension fee will be equal to ten percent of the stumpage price of all uncompleted Payment Units

(B) For contracts where only skidding and hauling remain to complete the contract, and no damage is being incurred by the State, the contract may be extended for a reasonable time period without a fee.

(C) For contracts where full payment for the entire sale has been made within thirty (30) days of the sale award date, one (1) free extension may be granted.

### 7.3 - Contract Modifications (2/04)

The conditions of this sale are completely set forth in this contract. This contract can be modified only by written agreement of the parties using Timber Sale Contract Supplement (PR 4031-1).

## 7.3 - Contract Modifications

### 7.3.1 - Emerald Ash Borer (2/05)

In the event that this area is quarantined for the emerald ash borer (*Agrilus planipennis* (Fairemaire)), the contract may be amended. This change may be selectively imposed on a specific portion of the sale, or it could apply to the entire sale. The DNR may either modify or cancel this contract regardless of when such facts become known.

Purchaser has the duty to report a suspected discovery of emerald ash borer to the Unit Manager. Operations in the area may be suspended pending further investigation of the site.

#### 7.4 - Assignment of Contract (2/04)

Assignment of a State Forest Timber Sale Contract may occur when the original Purchaser is unable to complete the contract. Assignment of Timber Sale Contract (PR 4031-2) is used when the contract responsibility and title of timber are transferred from the original Purchaser to a new purchaser and the new purchaser accepts all responsibilities of the contract. The original purchaser's security is released and security is required of the new purchaser. Signature of the original Purchaser, new Purchaser, and Unit Manager are also required.

#### 7.5 - Loss (2/04)

The State of Michigan is not responsible for loss of forest products due to insects, disease, or weather conditions.

#### 7.6 - Unfair Labor Practices (1/06)

The Department may terminate this contract upon written notice, if the purchaser or any subcontractor of the purchaser appears in the register compiled by the Michigan Department of Labor and Economic Growth pursuant to 1980 PA 278 (Employers Engaging in Unfair Labor Practices Act).

#### 7.7 - Covenant not to Discriminate (2/04)

The Purchaser must comply with the Michigan Civil Rights Act, 1976 P.A. 453, the Michigan Handicapper Rights Act, 1976 P.A. 220, and all other federal, state and local fair employment practices and equal opportunity laws, which prohibit discrimination against employees or applicants for employment for the reasons stated therein. Purchaser agrees to include in every subcontract this covenant not to discriminate in employment.

#### 7.8 - Worker's Compensation (2/04)

Purchaser shall obtain workers compensation insurance to cover claims under Michigan's Worker's Disability Compensation Act of 1969. Proof of insurance must be provided to the DNR. The Purchaser agrees to provide notification 30 days prior to cancellation or changes in coverage of the policy.

#### 7.9 - Liability (2/04)

The purchaser agrees to hold harmless the State of Michigan, its agents and employees, from all claims imposed or incurred by the purchaser or the purchaser's agents or employees for any bodily injury, loss of life, and/or damage to property, resulting from, arising out of, or in any way connected with the purchaser's operations.

The purchaser agrees to assume responsibility for and agrees to reimburse the State of Michigan for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses, including reasonable attorney fees, imposed on, incurred by, or asserted against the State that relate to or arise out of a claim, suit or proceeding based upon the conduct of the purchaser.

#### 7.10 - Certified Timber (1/06)

Unless otherwise indicated in this contract under the Sale Specific Conditions & Requirements, Section 7 - Other Conditions, the area encompassed by this timber sale is certified to the standards of the Forest Stewardship Council (FSC) - Certificate #SCS-FM/COC-090N and the Sustainable Forestry Initiative (SFI) - Certificate #NSF-SFIS-5Y031-S1. Forest products from this sale may be delivered to the mill as "FSC and / or SFI certified" as long as the contractor hauling the forest products is chain-of-custody (COC) certified or covered under a COC certificate from the destination mill. The purchaser is responsible for maintaining COC after leaving the sale area.

## **8 - Performance and Settlement**

### **8.1 - Performance Security (2/04)**

As guarantee of faithful performance, a cash bond, certificate of deposit, surety bond or irrevocable letter of credit (LOC) in the sum indicated within this contract is required before execution of the contract. Security coverage must extend for at least 6 months beyond the contract expiration date. As soon as security for performance of this contract is no longer necessary, cash bonds and certificates of deposit will be returned, and surety bonds and letters of credit will be released. The purchaser agrees that the performance security may be used by the State of Michigan upon failure of the purchaser to fulfill all contract requirements. In the event that this contract is extended, performance security must be obtained to cover the extension. Contracts will not be extended beyond the expiration date of the security; a continuation certificate extending the expiration date or another security must be obtained.

### **8.2 - Breach and Termination (2/04)**

The Department may cancel this contract upon written notice to purchaser for failure of the purchaser to comply with any term of the contract. However, multiple failures to comply may result in immediate termination of the contract, at the option of the Department. In lieu of termination of the contract, the Department retains the right to suspend work on the contract pending resolution of any contract violation.

### **8.3 - Uncompleted Sale (3/04)**

By the contract expiration date, if all cutting, skidding and decking is not completed as specified, damages will be collected. Liquidated damages will be 10% of the contract value of all uncompleted units. For a unit to be considered complete, all included timber must be cut and removed from the sale area and all contract provisions related to that unit must be met. See remedies below.

### **8.4 - Performance Record (8/05)**

Poor performance on this contract may affect your contracting status with the DNR. Sales may be refused to persons who have a poor performance record. Breach of this contract may result in termination of other State Forest Timber Sale Contracts.

### **8.5 - Remedies (3/04)**

All money paid under this contract and all timber or forest products remaining on the Sale Area at the time of termination may be retained by the DNR to satisfy the Purchaser's disregard of contractual obligations. In addition to the remedies provided in this contract, the State of Michigan reserves the right to pursue any remedy provided by law.